IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

-

WRIT PETITION No.23049 of 2004

Between:

Smt.Sayeeda Begum W/o.late M.Abdul jabbar Shah (F.F)
H.No.10-4-13/11/A1, Nehru Nagar, Masab Tank,

Hyderabad-500028.

..... PETITIONER

AND

1 The Government of India through its Secretary,

Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market,
New Delhi-110003.
2 The Government of India through its Secretary,
Ministry of Petroleum and Natural Gas, Room No.311,

A Wing, Sastri Bhavan, New Delhi-110001.
3 The Chairman and Managing Director,
Indian Oil Corporation Ltd., Corporate Office,

Scope Complex, Core-2,No.7,Institutional Area,
Lodhi Road, Newdelhi 110003.
4 The General Manager,A.P.State Officer,
India Oil Corporation Ltd., No.3-6-436 to 438,II Floor,

Naspur House, Himayatnagar, Hyderabad.
5 The Chief Manager, LPG, A.P.State Office, IOCL,
No.3-6-436 to 438,II Floor, Naspur House,
Himayatnagar, Hyderabad-29.
6 Senior Area Manager, for LPG, Indian Oil Corporation Ltd.,
No.3-6-436 to 438,II Floor, Naspur House,

Himayatnagar, Hyderabad-29.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an Order, Direction or Writ more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents in not affording an equal opportunity in appointments as LPG Distributorship/Dealership on par with that of widows of Para Military Personnel/Defence Services Personnel and Police Personnel as illegal, arbitrary, unconstitutional, violative of Doctrine of Equality as enshrined under Article 14 of the Constitution of India besides being discriminatory and opposed to all cannons of law and justice and consequently direct the Respondents to declare the petitioner as entitled on par with that of widows of Para Military Services/Defence Services/Police Personnel since the service rendered by all the freedom fighters being one and the same i.e., services towards freedom struggle and purpose of providing benefits to the widows is also one and the same.

Counsel for the Petitioner: Mr.C.Malla Reddy, Senior Counsel for Mr.P.PURUSHOTHAM REDDY

Counsel for the Respondent Nos.1 and 2: Smt.C.Vani Reddy, Addl.Standing Counsel for Central Government.

Counsel for the Respondent Nos.3 to 6: Mr.P.V.Sanjay Kumar.

The Court made the following:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.23049 OF 2004

O R D E R:

The petitioner seeks a declaration that the action of the respondents in not according equal opportunity and treatment to the widows of freedom fighters, on par with the widows of Defence and Para-military personnel, in the matter of granting or awarding dealership of petroleum products, as illegal, arbitrary and violative of Article 14 of the Constitution of India.

The husband of the petitioner participated in the freedom struggle. He is said to have died in the year 1966. In recognition of the services rendered by the husband of the petitioner, she was granted the freedom fighters pension, with effect from 2.08.1975, in terms of the existing schemes.

The Indian Oil Corporation intended to appoint LPG distributors at 226 places in various parts of the State. A notification was issued on 6.02.2004, inviting applications from the eligible candidates. The Company reserved some of the distributorships in favour of different categories. This included reservations in favour

of Defence personnel, freedom fighters, physically handicapped category, outstanding sports persons, etc., apart from Scheduled Castes and Scheduled Tribes. The grievance of the petitioner is that in the categories of Defence and Para-military personnel, the widows are included, whereas in the case of freedom fighters, no such facility is extended. According to the petitioner, such a treatment is discriminatory and violative of Article 14 of the Constitution of India.

Sri C.Malla Reddy, learned senior counsel appearing for the petitioner, submits that the nature of contribution and service to the nation by the freedom fighters is in no way inferior to the one rendered by the Defence and Para-military personnel, and in that view of the matter, the treatment accorded to them should have been same. He contends that once the respondents have included the widows of the Defence and Para-military personnel in the respective categories, the widows of freedom fighters deserve to be entitled the same.

Sri P.V.Sanjay Kumar, learned standing counsel for the Indian Oil Corporation, submits that the reservations referred to above are not provided for under the Constitution, and it is only in recognition of the service rendered by the respective categories with certain percentage and distributorships were allocated to them. He also submits that the categories of Defence and Para-military personnel on the one hand, and freedom fighters on the other, stand on a different footing and cannot be equated.

Article 14 of the Constitution of India mandates that State shall endeavour to accord equal treatment to all its citizens, and it shall not discriminate on the grounds of caste, sex, creed etc. Through a catena of decisions, the Supreme Court held that the principle of equity underlying Article 14 of the Constitution of India applies to the cases of distribution of largesse, apart from the matters of admission into Educational Institutions and employment into public service. While equity is the rule, reservation is an exception. Even where reservation is permitted under the Constitution itself, or any law made thereunder, hardly there exists any uniformity in the pattern. It would depend on the characteristics of the category in favour of which the reservation is sought to be made, as well as the nature of protection which is required to be extended. There are instances where the Supreme Court held that treating unequals as equals or according the same treatment to the persons not similarly situated, amounts to violation of Article 14 of the Constitution of India. It is for the authority, vested with the power in this regard, to keep relevant criteria in view

and to take appropriate decision in the matter of providing a reservation and the extent thereof. The Courts can interfere only where the reservation is excessive or is contrary to the relevant provisions of the law. Under no circumstances, the Courts can direct the State or its Agencies to provide reservation in favour of a particular category, nor they can expand or restrict the scope of such categories, in whose favour the reservation is. At the most, it can direct the concerned agency to take the grievance of the aggrieved section into account and take appropriate action.

This Court does not find any basis in the contention that the widows of freedom fighters are entitled to be treated on par with the widows of Defence or Para-military personnel. The submission of the learned senior counsel that for lack of proper candidates, the notification had to be issued several times in respect of certain areas, can certainly be taken note of, and if the same is true, the respondents may consider the feasibility of revising the ambit of the categories of freedom fighters. The respondents have already made special provision in favour of women freedom fighters. It is true that widows of freedom fighters cannot be accorded the same treatment, as women freedom fighters. But, where the adequate applicants are not there, the respondents can certainly consider the feasibility of extending the facility to the widows of freedom fighters. This, however, would depend on the nature of study that may have to be undertaken by the respondents in this regard.

Hence, the writ petition is dismissed, with an observation that it shall be open to the respondents to consider the feasibility of rendering the widows of freedom fighters fit to apply in accordance with law, in case adequate applications are not received from the existing category of freedom fighters, *vis-à-vis*, the notified places reserved for them. There shall be no order as to costs.

December, 2004.

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To

1 The Secretary, Ministry of Home Affairs,

Government of India, Lok Nayak Bhavan, Khan Market,
New Delhi-110003.

2 The Secretary, Ministry of Petroleum and Natural Gas,

Government of India, Room No.311,

A Wing, Sastri Bhavan, New Delhi-110001.

3 The Chairman and Managing Director,
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6 The Senior Area Manager, for LPG,

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Naspur House, Himayatnagar, Hyderabad-29.

7 Two CCs to the Government Pleader for Central Government,

High Court Buildings, Hyderabad (O.U.T)

8 Two C.D. Copies.